

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

ORIGINAL

In the Matter of)

)
Amendment of Section 73.606(b),)
Table of Allotments,)
TV Broadcast Stations,)
(Appleton, New London and)
Suring, Wisconsin))

MM Docket No. 92-299
RM-8049

RECEIVED

MAR 16 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

REPLY COMMENTS OF WISCONSIN VOICE OF CHRISTIAN YOUTH,

Wisconsin Voice of Christian Youth, Inc. ("WVCY"), licensee of Television Station WSCO(TV), Suring, Wisconsin, by its attorneys, hereby submits its reply comments in the above referenced proceeding, which seeks to change the community of license of WSCO from Suring to New London, Wisconsin. Notice of Proposed Rule Making in MM Docket No. 92-299, 8 FCC Rcd 181 (MMB 1993) ("NPRM").

I. Introduction

In its initial comments, WVCY demonstrated that the small size of Suring, as well as the limited population within the station's coverage area, makes the existing allotment incapable of supporting a full-service station. See WVCY Comments at 2-3. Thus, the public interest, as well as the requirements of Section 307(b) of the Communications Act of 1934, as amended, is best served by amending the Table of Allotments so that a viable television service will be provided to both New London -- as that

No. of Copies rec'd
List A B C D E

CA4

community's first local transmission service -- and surrounding communities (including Suring).¹

II. The Public Interest is Best Served by Adopting WVCY's Proposal

Aside from WVCY, only one party filed comments in this proceeding -- Aries Telecommunications Corporation ("Aries"), licensee of Television Station WGBA(TV), Green Bay, Wisconsin. Aries, which would compete for viewers with a viable New London facility, generally opposes reallocation of Channel 14 from Suring. See Aries Comments at 2. Significantly, Aries raises no technical objection to the proposal, nor does it question whether New London is a community worthy of an allocation. Indeed, aside from setting forth its opposition to any proposal that will provide an additional viable television service to the area, Aries' pleading is primarily a rehash of questions raised by the Commission itself in the NPRM and adds little to the determination of whether the change in allocation will serve the public interest.

For example, Aries "demonstrates" that, as all parties acknowledge, the proposal will remove Suring's sole local television transmission service. Aries Comments at 2. Similarly, Aries "finds" -- as did the Commission in the NPRM --

¹ As illustrated in WVCY's initial comments, the proposed New London facility would provide a Grade B reception service to Suring. WVCY Comments at 5.

that the proposal implicates the "freeze" on amendments to the Table of Allotments.² Id. at 3-4. Finally, Aries sets forth the less than startling proposition that WVCY must justify any requests for waivers of (i) the general rule that a community's sole local transmission service should not be removed,³ and (ii) the Freeze Order. Aries Comments at 4.

Of course, none of these points are in contention. Rather, the sole issue is whether the proposed change in allotments sufficiently serves the public interest to justify removing Suring's sole local television transmission service and, to the extent one is required, a waiver of the Freeze Order.

WVCY submits that such a change is in the public interest. WVCY demonstrated in its initial comments that the Suring community is incapable of supporting a full-service television station. See, e.g., WVCY Comments at 1-2. Thus, a change in allotment is essential to ensuring the long-term viability of Channel 14. WVCY further demonstrated that a waiver of the

² Advanced Television Systems and Their Impact on the Existing Television Service, 52 Fed. Reg. 28,346 (July 29, 1987) ("Freeze Order"). As explained in its initial Comments, WVCY submits that the Freeze Order, by its very terms, does not apply to requests made by an existing station. WVCY Comments at 7-8.

³ See, e.g., Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7096 (1990) ("Community of License MO&O").

Freeze Order will have only a limited effect on frequencies available in the Milwaukee area for ATV. Id. at 7-9.⁴

Aries nevertheless contends that, regardless of the validity of these demonstrations, the proposal is not in the public interest because the Commission does not guarantee the financial success of its licensees. Aries Comments at 5. Similarly, Aries notes that the Commission does not consider economic impact arguments in making its allotment decisions. Id.

Aries misses the point. Contrary to Aries' contention, WVCY does not ask the Commission to guarantee its financial success.⁵ WVCY merely seeks acknowledgement of the demonstrated fact that the present allotment is simply incapable of supporting a full-service station -- in effect, that the allotment at Suring has proven to be the functional equivalent of no allotment at all. Once that fact is acknowledged, the Commission must conclude that the public interest is better served by amending the table of allotments to ensure the station's viability than by perpetuating

⁴ Aries states that WVCY's "proposal[] would have a highly preclusive effect on the availability of ATV spectrum in the Milwaukee area." Aries Comments at 7. This claim, however, is entirely speculative.

⁵ Nor is this an "economic impact" situation. Indeed, the reference to that proceeding -- which dealt not with the economic justifications of the proponent of an allotment, but with claims by existing licensees that the presence of an additional station in the market would have an adverse affect on their ability to operate profitably -- is simply inapposite here. Thus, for example, Aries may not be heard to oppose the allotment to New London because the presence of a viable WSCO would affect its ability to operate profitably.

a past mistake that, WVCY submits, will preclude the station from ever operating on a self-sustaining basis.⁶

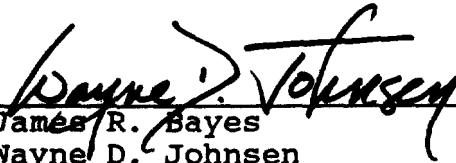
III. Conclusion

In sum, Aries -- the sole party opposing the proposed reallocation -- has done nothing to undermine WVCY's demonstration that the existing community of license is incapable of supporting a full-service television station. Accordingly, the Commission should find that the proposal serves the public interest and change the community of license of Channel 14 to New London, Wisconsin, and modify the WSCO license accordingly.

Respectfully submitted,

WISCONSIN VOICE OF CHRISTIAN YOUTH,
INC.

By:


James R. Bayes
Wayne D. Johnsen
of

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys


March 16, 1993

⁶ As demonstrated in WVCY's initial comments, the relatively small loss area created by the proposal is outweighed by the fact that retention of the allotment would likely result in the loss of service to that area in any event -- as well as to a much larger population that would continue to be served by a New London facility. In any event, WVCY has proposed to serve the loss area through alternative means. WVCY Comments at 6-7.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 1993, I caused copies of the foregoing "Reply Comments of Wisconsin Voice of Christian Youth, Inc." to be mailed via first-class postage prepaid mail to the following:

David D. Oxenford, Esq.
Gregory L. Masters
Fisher, Wayland, Cooper and Leader
1255 23rd Street, NW
Washington, DC 20037



Roberta Rea